GOVERNMENT OF MYSORE.

LEGISLATIVE DEPARTMENT.

The following Draft Regulations, which are under the consideration of the Government of Mysore, are re-published for general information with a Memorandum of Objects and Reasons.

By order,
V. N. NARASIMMIYENGAR, *General Secretary.*

Memorandum of Objects and Reasons.

In Mysore the Legislative and Executive functions are vested in the same authority, *namely*, the Maharaja. No suits in the Civil Courts of the State lie in respect of any acts done by the Maharaja or by those deriving their authority from Him to administer the Executive Government of the State. Such suits did not lie against the British Government or the Chief Commissioner who administered the State in the name of the Maharaja (see Srinivasaiengar *vs.* Chief Commissioner), nor can such suits now lie against His Highness' Government. The remedy in all such cases is by petition to the Sovereign himself.

Under such circumstances the Civil Procedure Code of Mysore always omitted provision for suits against the Government. The omission existed both in the Code of 1877 introduced by Government of India Notification, dated 27th May 1877, and it now exists under the Code of 1882 introduced by Regulation II of 1884. Sections 33, 34, 35, 36 and 37 of this Regulation, provide for the alteration of Sections 416, 418, 424 and 429, and the omission of Sections 419, 420 and 421, of the British Civil Procedure Code of 1882, the object of such alterations and omissions being to exclude suits from the Civil Courts of the State against the Government of Mysore.

The remaining provisions of Chapter XXVII of the British Civil Procedure Code of 1882 are in force in Mysore. These relate to suits by Government (Sections 416, 417 and 418) and to suits against Public Officers as defined in Section 2 thereof. Of suits of the latter kind, a distinction is made between—

(*a*) suits against Public Officers which may proceed as between private parties, except as regards service of summons (Section 422), adjournment (Section 423) and arrest and attachment otherwise than in execution (Sections 425 and 427),

(*b*) suits against Public Officers of which the defence is undertaken by the Government and which may be defended by the Government Pleader (Section 426),

(*c*) suits against a Public Officer "in respect of an act purporting to be done by him in his official capacity" Section 424. In such suits the Public Officer may be exempted from personal appearance Section 428, and any decree passed *against* the Public Officer shall not be executed within three months from the date of a report by the Court to the Government, Section 429.

The facts stated in the foregoing paras were not kept in view when enacting Chapter XIV of the Mysore Land Revenue Code of 1888, and consequently in some of its Sections there is mention of "Suits against the Government" which as a matter of fact do not lie. It is desirable to correct this defect.

Again the Chief Court are reported to have held (Mysore Law Reports XV, page 243) that Section 229 of the Mysore Land Revenue Code applies only to Revenue Officers, whereas the intention was that it should apply to "any officer of Government in his official capacity." Chapter XIV of the Mysore Land Revenue Code is an adaptation of the Bombay Revenue Jurisdiction Act of 1876, which by its 15th Section, amended Section 32 of the Bombay Civil Courts Act XIV of 1869, almost in the terms of the Mysore Section 229.

Lastly it is found that protection, similar to what is afforded to Revenue Officers by Section 229, para 1 of the Mysore Land Revenue Code, is required also in the case of other Public Officers including Judges, Magistrates and Police Officers. Under such circumstances it will be most convenient to re-enact Chapter XIV of the Mysore Land Revenue Code with the necessary amendments, excluding therefrom all provisions applicable to official acts of Public Officers, and to enact a separate law for the protection of Judicial, Police, Revenue and other Public Officers.

Hence the accompanying two Draft Regulations, the objects and reasons of which may be briefly explained as follows :—

MYSORE LAND REVENUE CODE AMENDMENT REGULATION.

(1) Sections I and III merely verbal.

(2) Section II is necessary as there is no more important work connected with Land Revenue than the control and regulation of irrigation supply and the use of Government water generally.

(3) Section III re-enacts Chapter XIV by the same number of Sections as it now contains. The amendments are as explained below.

(*a*) Section 219 (old Section 219). The definition of "Hereditary officer and servant" is intended to keep out of Civil Courts suits regarding hereditary muzrai and other similar officers, in accordance with the rule laid by Sir Mark Cubbon, in Circular No. 30, dated 26th October 1854, [illegible] still in full force and effect.

(*b*) Section 221 (old Section 221). Suits against the Government are omitted. Clauses (*h*) and (*i*) of the Section as it now stands are also omitted, because the enactments contemplated in these clauses do not exist in Mysore and cases of express grants by Government are provided by the Land Inam Rules of 14th December 1867* which still have the force of law. The clauses in question are intended to modify the preceding clause (*f*) but they have no application to Mysore and their retention can only tend to mislead.

(*c*) Clause (*h*) of the Draft section is new and provides for the very important matter of non-interference by Courts of Law with matters of irrigation regarding which the Government is everywhere necessarily the absolute final authority.

(*d*) Section 222 of the Draft is new and expressly reserves to the Government the final decision of matters which the preceding section excludes from the jurisdiction of the Civil Courts.

(*e*) Section 223 of the Draft re-enacts in a more convenient form clauses (*b*) and (*c*) and last para of the present Section 222.

(*f*) Section 224 of the Draft is a mere amplification of the subject of clause (*a*) of present Section 222.

(*g*) Section 225 of the Draft is new, and provides that suits under the preceding section should be brought against the Deputy Commissioner, who for such purposes will represent the Government.

and (*h*) The remainder of the Draft Chapter calls for no remarks.

REGULATION FOR THE PROTECTION OF JUDICIAL, POLICE, REVENUE AND OTHER PUBLIC OFFICERS.

The marginal references in the Draft, explain the sources from which the various provisions have been taken.

Section 4 as regards the defence of good faith, lays down as express law what exists elsewhere as unwritten law as regards *all* Public Officers and as written law in Act XVIII of 1850 as regards Judicial Officers.

(DRAFT REGULATION).

REGULATION No. OF 189

A Regulation to amend Regulation IV of 1888 (*the Mysore Land Revenue Code.*)

Preamble. Whereas it is expedient to amend Regulation IV of 1888 (the Mysore Land Revenue Code), His Highness the Maharaja is pleased to enact as follows :—

I. In Section 1 for the words "The Mysore Land Revenue Code 1888" substitute "The Mysore Land Revenue Code."

II. In Section 3 clause (1) for the words "records connected therewith" substitute the following, "records connected therewith, and includes officers in whom are vested the duties of controlling, distributing or regulating the supply and use, for irrigation or other purposes, of water available at or from any Government work or other source the right to which vests in Government."

III. In Section 27 for the words "or surety if in custody" substitute "or other person as aforesaid or surety or sureties if in custody."

Substitution for Chapter XIV of the Land Revenue Code. IV. For Chapter XIV substitute the following, namely :—

"CHAPTER XIV.

"REVENUE JURISDICTION.

Mysore Land Revenue Code, Section 219. Interpretation clause. "219. In this chapter, unless there be something repugnant in the subject or context—

"Land." "Land" includes the sites of villages, towns and cities; it also includes trees, growing crops and grass, fruit upon, and juice in, trees, rights of way, ferries and fisheries.

"Land Revenue." "Land Revenue" means all sums and payments in money or in kind received or claimable by, or on behalf of, Government, from any person on account of land held by, or vested in, him, and any cess or rate authorized by Government under the provisions of any law for the time being in force.

* by Government of India (Foreign Department) letter No. 122, dated 21st April 1868.

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Sir Mark Cubbon's Circular Order No. 30, dated 26th October 1854.

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"220. Nothing

Saving of provisions of Act.

Mysore Land Revenue Code, Section 220.

"221. No Civil Court shall ex
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Bar of certain Suits.

Mysore Land Revenue Code, Section 221, except clauses (h) and (i).

(a) Claims in respect of any
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Hereditary Offices.

claims to perform the duties of
any injury caused by exclusion from
claims to set aside or avoid any
such officer or servant, which may be passed by any officer duly authorized in that behalf; or

ining to
er or servant app
uch by Government;
ch officer or servant, or in res
office or service; or
rder relating to such office or service or

claims in respect of lands declared by Government, or any officer duly authorized in that behalf, to be held for any service whatsoever;

(b) Objections—

Assessment and Settlement.

to the amount or incidence of any assessment of land revenue authorized by Government, or to the mode of assessment, or to the principle on which such assessment is fixed; or

to the validity or effect of the notification of survey or settlement, or of any notification determining the period of settlement;

(c) Claims connected with or arising out of any proceedings for the realization of land revenue, or the rendering of assistance by Government, or any officer duly authorized in that behalf, to superior holders

Realisation of Land Revenue.

for the recovery of their dues from inferior holders; or claims to set aside on account of irregularity, mistake or any other ground except fraud, sales for arrears of land revenue;

(d) Claims—

(1) to be entered in the Revenue survey or settlement records or village papers as liable for the land revenue, or as superior holder, inferior holder, occupant or tenant; or

Entries in Survey records, &c.

(2) to have any entry made in any record of a Revenue survey or settlement; or

(3) to have any such entry either omitted or amended;

(e) Claims relating to the distribution of land or allotment of land revenue on partition of any estate under this Regulation, or under any other law for the time being in force;

Partition of Estates.

(f) Claims to hold land wholly or partially free from payment of land revenue; or

Revenue free (Inam) lands, payments from Revenues, cesses and rates and occupation of Government land.

to receive payments charged on or payable out of land or other revenues; or

to set aside any cess or rate authorized by Government under the provisions of any law for the time being in force; or

respecting the occupation of waste or vacant land belonging to Government;

(g) Claims regarding boundaries fixed under Bombay Act I of 1865 or under this Regulation, or under any other law for the time being in force, or to set aside any order passed by a competent officer under any

Boundaries.

such law with regard to boundary marks; and

use of water, for irrigation or other
available at or from any Government
ther source, the right to which vests
Government, or to the quantity, the
of such supply or use.

he last preceding section, the decision
Government shall be final.

all be held to prevent the Civil Courts
entertaining the following suits :—

private parties for the purpose of establishing any pri-
ay be effected by any entry in any record of a Revenue
r in any village papers, or by any settlement of bounda-
ries, u ay Act I of 1865, this Regulation or any other law for
the time ; and

(*b*) Su superior holders and inferior holders, not otherwise
expressly provi by this Regulation.

Mysore Land Revenue Code, Section 222, clause (*a*).

"224. Notwithstanding Section 221 shall be held to prevent the Civil Courts from entertaining suits brought to contest a demand for public money or papers, or other Government property, or for land Revenue or rent due to the holder of a commission, or for land Revenue due to the Government, preferred in accordance with security bonds executed under Sections 27, 102 or 170 ; or to recover any amount, paid under protest under Sections 102 and 170 or realized by any process under chapter XI ;

Saving of certain other suits.

when such suits are on the ground—

(1) that the claim in respect of which the demand, payment under protest, or realization, had been made was in excess of what was authorized by Government in that behalf, or

(2) that such claim had been duly satisfied previous to such demand, payment under protest, or realization, or

(3) that the plaintiff or the person he represents was not liable to be proceeded against in respect of such claim..

New.

225. In every suit brought under the last preceding section, the Deputy Commissioner of the District in which the cause of action arose shall be made party in his official capacity.

Suits against Deputy Commissioners.

Mysore Land Revenue Code, Section 223 para 2.

"226. If any Revenue officer absconds or does not attend when called on by his official superior, and if the Deputy Commissioner of the District proceeds against him or his sureties for public money, papers or property, according to the provisions of this Regulation, or of any law for the time being in force, such Deputy Commissioner shall not be liable to pay damages or costs in any suit brought against him by such officer or sureties, although it appears that a part only, or no part whatever, of the sum demanded was due from the officer so absconding or failing to attend, or that he was not in possession of the papers or property demanded of him.

Bar of certain suits against Deputy Commissioners.

Mysore Land Revenue Code, Section 224.

"227. Nothing in any law for the time being in force which authorizes the punishment departmentally of any Revenue officer for any offence or breach of duty or which sanctions his prosecution criminally for such offence or breach, shall be held to bar any remedy which may be had in the Civil Court against such Officer.

Punishment or prosecution of Revenue officers no bar to Civil remedies.

Mysore Land Revenue Code, Section 226.

"228. If, in the trial or investigation of any suit, claim or objection which, but for the provisions of this chapter, might have been tried or investigated by a Civil Court or in any appeal against orders passed in such trial or investigation, there arises any question on which the Government, whether upon its own motion or upon the recommendation of the Deputy Commissioner, or upon the application of the party interested, desires to have the decision of the Chief Court, the Government may cause a statement of the question to be prepared and may refer such question for the decision of the Chief Court.

Power of Government to refer questions for decision of Chief Court.

The Chief Court shall fix an early day for the hearing of the question referred, and cause notice of such day to be placed in the Court house.